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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/563,604

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Florence Laurent

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EXAMINER

O'NEILL, BRIANNE E

ART UNIT

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3776

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/563,604	<b>Applicant(s)</b> LAURENT, FLORENCE	
	<b>Examiner</b> BRIANNE O'NEILL	<b>Art Unit</b> 3776	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/16/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 17-25 and 27-31 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout (US Pub # 2002/0030064) in view of Tsao (US Pat # 5,702,035).**

In regards to claim 17, Lacout teaches a hair coloring system comprising at least one container (Figure 1, 1, device) holding a coloring composition for forming a hair coloring product (Paragraph 0001, Lines 4-9), said composition comprising at least one hair colorant; and at least one test device designed to perform a test (Figure 1, 104, applicator member) but does not teach the test device comprising a tube having an internal space containing at least one hair colorant of the coloring composition, wherein the tube incorporates an outlet aperture, and wherein the test device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture. However, Tsao teaches an applicator tube (Figure 2, 70, tube) having an internal space containing product (see figure 2), wherein the tube incorporates an outlet aperture (evidenced by applicator element, Figure 2, 72), and wherein the test device is arranged such that the contents of the tube are expelled

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from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture (Col 2, Lines 34-52). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the system of Lacout to have the testing device be the sample tube of Tsao as an alternative structure for applying product to the body.

In regards to claim 18, as applied to claim 17 above, modified Lacout teaches a liquid or solid plug (Tsao, Figure 2, 78, stopper) is arranged inside the tube to isolate the outlet aperture from the internal space of the tube, but does not teach the plug is arranged such that it is discharged together with the contents of the tube via the outlet aperture when the internal space of the tube is vented or in response to excess pressure inside the tube. However, since the stopper is arranged to allow the fluid to pass, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the seal of modified Lacout to be able to be fully expelled from the device during use, as a matter of design choice.

In regards to claim 19, as applied to claim 17 above, modified Lacout teaches a volume of hair colorant contained in the tube, but does not teach the volume ranges from 0.01 ml to 5 ml. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to have the volume be between about 0.01 ml to 5 ml since it has been held that where the general condition of a claim are disclosed in the prior art, discovering an optimum or workable range involves only routine skill in the art. In re Aller, 105 USPQ 233.

In regards to claim 20, as applied to claim 19 above, modified Lacout teaches a volume of hair colorant contained in the tube, but does not teach the volume ranges from 0.005 ml to 1 ml. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to have the volume be between about 0.005 ml to 1 ml since it has been held that where the general condition of a claim are disclosed in the prior art, discovering an optimum or workable range involves only routine skill in the art. In re Aller, 105 USPQ 233.

In regards to claim 21, as applied to claim 17 above, modified Lacout teaches said venting of the internal space of the tube is effected by a breakable element that can be severed, detached, perforated, or deformed, and which is located opposite the outlet aperture (see figure 2 of Tsao).

In regards to claim 22, as applied to claim 21 above, modified Lacout teaches the test device further comprises a component to support the breakable element on the tube after it has been severed (see figure 2 of Tsao, right side of the figure where the breakable portion is still supported by the tube).

In regards to claim 23, as applied to claim 22 above, modified Lacout teaches said component is in the form of a tab of residual material (see figure 2 of Tsao where the device is supported by an end of the tube).

In regards to claim 24 and 27-28, as applied to claim 18 above, modified Lacout teaches the tube is fitted with an applicator element (Tsao, Figure 2, 72, absorbing element) wherein an applicator element is separated from the contents of tube prior to

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use by the liquid or solid plug (Tsao, Col 2, Lines 44-46) made of a silicone resin (Tsao, Col 2, Line 45).

In regards to claim 25, as applied to claim 24 above, modified Lacout teaches the applicator element is chosen from a cotton tip (Tsao, Col 3, Lines 34-37).

In regards to claim 29, as applied to claim 17 above, modified Lacout teaches the coloring composition is an oxidation coloring composition comprising at least one oxidation colorant (Lacout, Paragraph 0030, Lines 1-6).

In regards to claim 30, as applied to claim 17 above, modified Lacout teaches an additional container (Lacout, Figure 1, 30, second compartment) holding an oxidizing composition to be mixed with the coloring composition in order to obtain the hair coloring product (Lacout, Paragraph 0030, Lines 1-6).

In regards to claim 31, as applied to claim 17 above, modified Lacout teaches the coloring composition is a direct coloring composition comprising at least one direct colorant (Lacout, Paragraph 0030, Lines 1-6).

In regards to claim 34, Lacout teaches a test device for use in a hair coloring system, said system comprising said test device (Figure 1, 104) and at least one container (Figure 1, 1) holding a coloring composition for forming a hair coloring product (Paragraph 0001, Lines 4-9), said composition comprising at least one hair colorant (Paragraph 0001, Lines 7-8), wherein the hair colorant of said composition is chosen from direct colorants (Paragraph 0032, Lines 1-3); at least one hair colorant of said composition and at least one compound chosen from oxidation bases and coupling agents (Paragraph 0030, Lines 1-6), but does not teach said test device comprises a

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tube having an internal space containing at least one and further wherein said tube incorporates an outlet aperture, said test device being arranged such that the contents of the tube are expelled from the outlet aperture when the tube is vented via at least one passage separate from the outlet aperture. However, Tsao teaches an applicator tube (Figure 2, 70, tube) having an internal space containing product (see figure 2), wherein the tube incorporates an outlet aperture (evidenced by applicator element, Figure 2, 72), and wherein the test device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture (Col 2, Lines 34-52). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the system of Lacout to have the testing device be the sample tube of Tsao as an alternative structure for applying product to the body.

In regards to claim 35, as applied to claim 34 above, modified Lacout teaches a liquid or solid plug is arranged inside the tube (Tsao, Figure 2, 78, stopper) to isolate the outlet aperture from the internal space of the tube (Tsao, Col 2, Lines 44-46), but does not teach the plug is arranged such that it is discharged together with the contents of the tube via the outlet aperture when the internal space of the tube is vented or in response to excess pressure inside the tube. However, since the stopper is arranged to allow the fluid to pass, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the seal of modified Lacout to be able to be fully expelled from the device during use, as a matter of design choice.

In regards to claim 36, Lacout teaches a method for testing the sensitivity of a subject to a hair coloring product before treatment with said hair coloring product, said method comprising applying said hair coloring product in a test location on said subject with a test device (Paragraph 0006, Lines 1-3) but does not teach said test device comprises a tube having an internal space containing at least one and further wherein said tube incorporates an outlet aperture, said test device being arranged such that the contents of the tube are expelled from the outlet aperture when the tube is vented via at least one passage separate from the outlet aperture. However, Tsao teaches an applicator tube (Figure 2, 70, tube) having an internal space containing product (see figure 2), wherein the tube incorporates an outlet aperture (evidenced by applicator element, Figure 2, 72), and wherein the test device is arranged such that the contents of the tube are expelled from the outlet aperture by the excess pressure within the internal space of the tube or when the tube is vented via at least one passage separate from the outlet aperture (Col 2, Lines 34-52). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the system of Lacout to have the testing device be the sample tube of Tsao as an alternative structure for applying product to the body.

**Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout and Tsao, as applied to claim 18 above, and in view of Tsaur (US Pat # 7,416,355).**



In regards to claim 26, as applied to claim 18 above, modified Lacout teaches the plug, but does not teach it comprises a liquid chosen from mineral oils, fluorinated products, and silicones. However, Tsaur teaches a fluid filled tube having a plug made of liquid silicone (Col 2, Lines 34-36). It would have been obvious to form the sealer of modified Lacout to be the silicone of Tsaur as an alternative means for sealing the device.

**Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lacout and Tsao, as applied to claims 29 and 31 above, and in view of Dias et al. (US Pat # 6,432,147).**

In regards to claim 32, as applied to claim 29 above, modified Lacout teaches the coloring composition comprises at least one hair colorant but does not teach it includes and at least one compound chosen from surfactants and solvents other than water. However, Dias et al. teaches hair dye compositions include surfactants and solvents other than water (Col 4, Line 61- Col 5, Line 7). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the composition of Lacout to include the surfactant, as taught by Dias et al. as such ingredients are well known ingredients for hair dye compositions.

In regards to claim 33, as applied to claim 31 above, modified Lacout teaches the coloring composition comprises at least one hair colorant but does not teach it includes and at least one compound chosen from surfactants and solvents other than water. However, Dias et al. teaches hair dye compositions include surfactants and solvents

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other than water (Col 4, Line 61- Col 5, Line 7). It would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the composition of Lacout to include the surfactant, as taught by Dias et al. as such ingredients are well known ingredients for hair dye compositions.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIANNE O'NEILL whose telephone number is (571)270-7489. The examiner can normally be reached on Monday- Friday, 9:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3776

/B. O./  
Examiner, Art Unit 3776